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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,390	06/04/2001	Henrik Clausen	4305/OJ425	5094

7590 09/04/2003
DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

EXAMINER

RAO, MANJUNATH N

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 09/04/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/874,390

Applicant(s)

CLAUSEN ET AL.

Examiner

Manjunath N. Rao, Ph.D.

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-5,8-19,22,25 and 28.

Claim(s) objected to: _____.

Claim(s) rejected: 20,21,23,24,26,27 and 29.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 15.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: All previous rejections are maintained for reasons of record in view of non-entry of the amendments.

Advisory Action

Claims 1-5, 8-29 are currently pending and under consideration in this application.

The proposed amendment will not be entered because it raises new issues that would require further consideration of specific claims by the Examiner. While applicant's amendment would overcome the rejection of claim 21 under 35 U.S.C. 112, 2nd paragraph and rejection of claims 20, 21 and 24 under 35 U.S.C. 112, 1st paragraph for lack of enablement, it in turn raises new issues which requires the Examiner to consider by applying new art rejections to the amended claims. Applicants have now amended claims 21 and 24 to recite phrases such as "95% identical to a subsequence of SEQ ID NO:1 selected from a group consisting of nucleotides 1-245, 246-435 and 436-2319 of SEQ ID NO:1" and "95% sequence identity with a subsequence of SEQ ID NO:1 selected from a group consisting of nucleotides 1-245, 246-435 and 436-2319 of SEQ ID NO:1" respectively. Introduction of such language in claims 21 and 24 requires the Examiner to consider the new issues of obviousness in view of certain available prior art information. Therefore the above amendment has not been entered.

Examiner has also not considered the proposed new claim by the applicants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 703-306-5681. The examiner can normally be reached on 7.30 a.m. to 4.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy can be reached on 703-308-3804. The fax phone

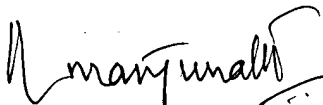
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numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0196.


MANJUNATH RAO
PATENT EXAMINER

Manjunath N. Rao
September 4, 2003